

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE CHEROKEE BROWN,

Plaintiff,

v.

A. REILLY, et al.,

Defendants.

No. 2:20-cv-1709 WBS AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On November 5, 2021, the undersigned screened the complaint and found that plaintiff had sufficiently stated a claim for excessive force against defendants Hood, Reilly, Gonzales, and Phillips, but that he had not stated any other claims against them and had failed to state any claims against defendant Dina. ECF No. 27. Plaintiff was given the option of (1) proceeding on his excessive force claim and voluntarily dismissing all other claims against Hood, Reilly, Gonzales, and Phillips and all claims against Dina, or (2) amending the complaint. Id. at 9.

In response to the screening order, plaintiff has filed both objections to the screening that make additional allegations related to retaliation, ECF No. 31, and a notice stating that he would like to proceed on the complaint as screened and voluntarily dismiss without prejudice all claims except his excessive force claim against Hood, Reilly, Gonzales, and Phillips, ECF No. 30. It is

1 therefore unclear whether plaintiff wants to proceed on the complaint as screened, amend the
2 complaint to add additional allegations related to retaliation, or stand on the original complaint.
3 Because plaintiff has provided conflicting responses, he will need to clarify for the court how he
4 wishes to proceed. Plaintiff has the following three options:

- 5 1. Plaintiff may proceed on the complaint as screened. This means that the case will go
6 forward on plaintiff's excessive force claim against defendants Hood, Reilly,
7 Gonzales, and Phillips only, and plaintiff will be voluntarily dismissing without
8 prejudice all other claims against defendants Hood, Reilly, Gonzales, and Phillips and
9 all claims against defendant Dina.
- 10 2. Plaintiff may amend the complaint. This means that plaintiff will be given an
11 opportunity to file an amended complaint to add additional facts in order to attempt to
12 state additional claims for relief.
- 13 3. Plaintiff may stand on the original complaint. This means that plaintiff believes the
14 allegations in his original complaint, without any additional information, are sufficient
15 to state a claim for relief and that he does not want to amend the complaint. If plaintiff
16 chooses this option, the undersigned will convert the screening order to findings and
17 recommendations and recommend that all claims against defendant Dina and all
18 claims against defendants Hood, Reilly, Gonzales, and Phillips, except the excessive
19 force claim, be dismissed for failure to state a claim. Plaintiff will then have an
20 opportunity to file objections to the findings and recommendations, which the district
21 judge will consider before deciding whether to adopt them.

22 Accordingly, IT IS HEREBY ORDERED that within fourteen days of the service of this
23 order, plaintiff shall complete and return the attached form notifying the court how he wants to
24 proceed. If plaintiff does not return the form, the court will assume that he is choosing to stand
25 on the original complaint and will recommend dismissal without prejudice of all claims against

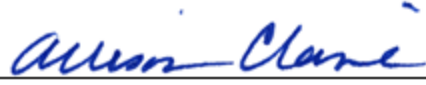
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defendant Dina and all claims against defendants Hood, Reilly, Gonzales, and Phillips, except the excessive force claim.

DATED: November 17, 2021


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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PLAINTIFF'S NOTICE ON HOW TO
PROCEED

Check one:

☐ Plaintiff wants to proceed immediately on his excessive force claim against defendants Reilly, Hood, Phillips, and Gonzales without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice all other claims against defendants Reilly, Hood, Phillips, and Gonzales and all claims against defendant Dina pursuant to Federal Rule of Civil Procedure 41(a).

☐ Plaintiff wants to amend the complaint.

☐ Plaintiff believes the allegations in the original complaint are sufficient and wants to stand on the original complaint without amendment.

DATED: _____

Ronnie Cherokee Brown
Plaintiff pro se